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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

|                            |                                   |
|----------------------------|-----------------------------------|
| UNITED STATES OF AMERICA,  | )                                 |
|                            | )                                 |
| Plaintiff,                 | )IN EQUITY NO. C-125-ECR          |
|                            | )Subproceeding: C-125-B           |
| WALKER RIVER PAIUTE TRIBE, | )3:73cv00127-ERC-LRL              |
|                            | )                                 |
| Plaintiff-Intervenor,      | )SIXTEENTH REPORT OF THE UNITED   |
|                            | )STATES OF AMERICA CONCERNING     |
| vs.                        | )STATUS OF SERVICE ON CERTAIN     |
|                            | )PERSONS AND ENTITIES AND REQUEST |
| WALKER RIVER IRRIGATION    | )FOR GUIDANCE                     |
| DISTRICT,                  | )                                 |
|                            | )                                 |
| a corporation, et al.,     | )                                 |
|                            | )                                 |
| Defendants.                | )                                 |

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The United States of America (“United States”), on behalf of itself and the Walker River Paiute Tribe (“Tribe”), submits the following information related to its service efforts on persons and entities subject to service under the Case Management Order (Apr. 18, 2000) (“CMO”) (Doc. # 108). The instant filing seeks guidance from the Court as to whether certain persons and entities that responded to service or were personally served, all of which have interests located in Mono County, California, are intended to be included in this action. This issue has been included in the agenda for the Status Conference scheduled for October 19, 2010. *United States*

*of America's List of Proposed Agenda Items for the Status Conference Scheduled for October 19, 2010 (# 1608).*

Paragraph 3 of the CMO sets forth nine categories of persons and entities to be served in the Walker River Basin in the States of California and Nevada. The CMO also states that the “categories to be served with process may be subject to adjustment and modification by order of the Magistrate Judge as he may find to be appropriate.” CMO at p. 3.

During our research of potential defendants under the CMO, we identified a number of potential defendants holding permits for small, privately owned groundwater systems that are permitted and inspected by the Mono County California Health Department. Some of these persons and entities are water users that the California Department of Health Services, Drinking Water Field Operations Branch (“CDHS”), has classified as “Transient Non-Community Water Systems,” which it defines as “[a] public water system that provides water in a place such as a gas station or campground where people do not remain for long periods of time.”

We served these persons and entities under CMO paragraph 3h, which requires service on “[a]ll municipal providers in California within the Walker River Basin who currently use groundwater.”<sup>1</sup> Although these small systems are designated “public water systems” and are clearly not residential systems, they also do not appear to be what is typically considered a “municipal” system. We have categorized them informally as “quasi-municipal.” Although several of these persons and entities are included in this action based on other water rights, we do

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<sup>1</sup> The CMO also requires service on the following categories of persons and entities located in the Walker River Basin in California: 1. Successors in interest to all water rights holders under the Decree (April 14, 1926), modified, Order for Entry of Amended Final Decree to conform to Writ of Mandate, Etc. (Apr. 24, 1940); 2. All holders of surface water rights under the laws of California who are not presently parties to this adjudication; and 3. All users of groundwater for irrigation. CMO at ¶ 3(a), (b), and (e).

not yet have a finding from the Court that any of these persons and entities has been deemed served for these kinds of uses.

Several of the defendants served assert that their water systems should not fall within the categories of persons and entities that should be served pursuant to the CMO. We request that the Court determine whether these defendants should be included in this action. It appears to the United States and some of the primary defendants that this determination involves two questions:

1. Whether this group falls under category (h) or any other service category in Paragraph 3 of the CMO; and
2. Whether the Court intended to include them in the CMO.

In the past, when similar questions have arisen, the Court has asked the primary parties in the case (e.g., the States of Nevada and California, the Walker River Irrigation District) to voice their opinions, if any, on issues regarding the breadth of necessary service. In July 2010, the United States provided a draft of a possible filing (including exhibits) to the attorneys for the State of California, the State of Nevada, Mono County, the Walker River Irrigation District (“WRID”), the Walker River Paiute Tribe, and the Walker Lake Working Group and Mineral County, and asked for their comments and positions on the issue raised so that this information could be included in this report to assist the Court.

There was no agreement among the parties who responded, except that it should be included as one of the issues to be discussed at the Status Conference scheduled for October 19, 2010. Mono County, California, contends that these persons and entities should not be included in this case and WRID asserts that the resolution of this issue may depend on the magnitude of the use of underground water by these users. Excerpts of E-mail communications are set forth below to provide the Court with an introduction to the positions asserted thus far, in advance of the Status Conference.

Mono County takes the position that these persons and entities are not "municipal providers . . . who currently use groundwater" as set forth in paragraph 3h of the CMO:

"Municipal" means pertaining to local government, usually a city or a town. In some contexts, it is construed as including other types of local government entities such as a special district. (See e.g., 45 CalJur, Municipalities, § 2, pp. 16-17; 1 McQuillin, Municipal Corporations (3d ed.1987) §§, 2.07 2.27 .)

However, the entities listed in the Sixteenth Report are wholly private (a restaurant and what appear to be RV parks) run by private individuals or corporations. The fact that these private entities must obtain a permit from Mono County Environmental Health (as the delegated enforcement agency of the California Department of Health Services) for their water systems does not make them "municipal providers."

You have represented that these private entities have what is characterized as a "transient non-community water system." While I have not yet verified that that is actually the case (i.e., that the entities you include actually have this type of system), having such a system does not equate with being a "municipal provider" of water.

A transient non-community water system is defined as a "public water system that is not a community water system or a nontransient noncommunity water system." (See 22 CCR 64401.85 and Cal Health and Safety Code section 116275 (o).) A "public water system" is defined in relevant part as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year . . .". (See Cal Health and Safety Code section 116275(h).) A community water system is a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents. (See H&S 116275(i).) A nontransient noncommunity water system is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year (See Health and Safety Code section 116275(k).)

Thus, the term "public" in these statutes is not indicative of any municipal status or function, but instead refers to the number of individuals connected to the service or the number of available service connections. Restaurants or RV parks providing water to their customers are simply not "municipal providers" in any sense of the word. These are private businesses which happen to have water systems with 15 or more service connections or which regularly serve at least 25 individuals daily at least 60 days out of the year.

Thus, these entities should not be included within the list of entities subject to paragraph 3(h) of the case management order as "municipal providers."

Excerpt, E-mail from Stacy Simon, Attorney for Mono County to Susan Schneider, Attorney for the United States, July 28, 2010.

WRID points out that the resolution of this issue may depend on the magnitude of the use of underground water by these users.

[W]e do not know what the court intended here. It appears that with respect to domestic users the Judge included them because they might be impacted by pumping underground water on the Reservation, rather than because their pumping might need to be curtailed to protect some water right on the Reservation based on the single source of supply issue. On the other hand, it appears that irrigation users and municipal providers were included because of the claim that underground and surface waters constitute a single source. That suggests to me that he was looking at the magnitude of use on that issue.

E-mail from Gordon DePaoli, Counsel for the Walker River Irrigation District, to Susan Schneider, August 17, 2009. Counsel for WRID has clarified that his use of the phrase “magnitude of use” does not entail a determination of actual water use. E-mail from Gordon DePaoli to Stacey Simon, September 13, 2010. *See also* CMO at pp. 1-4.

Persons and Entities Involved:

We identified twenty-two persons or entities that appeared to fit CMO paragraph 3(h), using a list provided by the Mono County Health Department. Eleven of these persons or entities responded to service by mail and those that did not respond were served personally or were already parties to this action based on other water rights. After we were contacted by one or more of these persons and entities, we began to take a closer look at some of them. We believe that five of the eleven persons or entities that responded to service are more appropriately treated as domestic users and should be dismissed because the CMO does not include domestic users among the persons and entities to be served in California.<sup>2</sup>

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<sup>2</sup> Consequently, we will seek dismissal of the following persons and entities in our 17<sup>th</sup> Service Report: 1. Daniel Smith dba Walker Country Store; 2. Toiyabe Indian Health Project, Case No. C-125-B: 16<sup>th</sup> Service Report/Request for Guidance

Information on five other persons or entities that responded to service by mail follows, presented in a similar format to that used in other Service Reports.<sup>3</sup>

1. Alpine Property Management Inc. (dba Paradise Shores RV Park);

a. Basis for inclusion: CMO 3h

b. Status of service: Eric Gehrung, CEO of Alpine Property Management Inc. responded with a Waiver of Service form and letter in which he described his water system as a single 6" well that serves potable water to seasonal Recreational Vehicle ("RV") spaces with little to no landscaping, and requested dismissal from this case.<sup>4</sup> Alpine Property Management Inc., dba Paradise Shores RV Park, has a water system that is permitted and inspected by the Mono County Health Department. According to the Mono County Health Department files, the CDHS classifies this system as a "transient non-community water system." *See* Exhibit 1.

c. Counsel: None indicated.

d. Address for service: Alpine Property Management Inc.  
Eric Gehrung, CEO  
PO Box 602  
Bridgeport, CA 93517

e. Requested Action: If the Court determines this type of water system should be included in this action, we request a determination that service is complete. If the Court decides this type of water system is not intended to be covered by the Case Management Order, we request dismissal.

2. Maynard M. Enos and Anne L. Enos Revocable Trust Under Trust Agreement Dated March 16, 1995 (dba Willow Springs Motel and RV Park):

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Inc.; 3. Walker General, Inc. (store); and 4/5. Carolyn J. Webb and John S. Webb, dba Summit Inn Restaurant.

<sup>3</sup> As with the previous Service Reports, this pleading includes a set of exhibits. The entire pleading has been served on all persons and entities receiving E-service in this case through the Court's CMECF system. Otherwise, we will serve the exhibits to this filing in the same manner in which we handled the previous filings: persons and entities addressed in this filing who are not registered for E-service receive a copy of the Service Report and the exhibits that concern their service status. In addition, upon request, we will provide them with copies of any additional exhibits they wish to obtain.

<sup>4</sup> Recently, Mr. Gehrung filed an inquiry with the Court on the status of Alpine Property Management, Inc. (# 1595).

a. Basis for inclusion: CMO 3h

b. Status of service: Maynard M. Enos returned a Waiver of Service form for the Trust. The Maynard M. Enos and Anne L. Enos Revocable Trust, dba the Willow Springs Motel and RV Park, has a small public water system for which the source is groundwater that is permitted and inspected by the Mono County Health Department. According to the Mono County Health Department files, the CDHS classifies this system as a “transient non-community water system.” *See* Exhibit 2.

c. Counsel: None indicated.

d. Address for service:

Maynard M. Enos and Anne L. Enos Revocable Trust  
Under Trust Agreement Dated March 16, 1995  
Maynard M. and Anne L. Enos, Trustees  
1451 Orchard Road  
Gardnerville, NV 89410

e. Requested Action: If the Court determines this type of water system should be included in this action, we request a determination that is service is complete. If the Court decides this type of water system is not intended to be covered by the Case Management Order, we request dismissal.

3. Gilleland, Avery C. (dba Walker Burger); see Theresa Gilleland, below.

4. Gilleland, Theresa (dba Walker Burger);

a. Basis for inclusion: CMO 3h

b. Status of service: Avery C. and Theresa Gilleland returned Waiver of Service forms. The Gillelands, dba Walker Burger, have a small public water system associated with a restaurant that is permitted and inspected by the Mono County Health Department. According to the Mono County Health Department files, the CDHS classifies this system as a “transient non-community water system.” *See* Exhibit 3/4.

c. Counsel: None indicated.

d. Address for service:

Avery C. and Theresa Gilleland  
dba Walker Burger  
309 North River Lane  
Coleville, CA 96107

e. Requested Action: If the Court determines this type of water system should be included in this action, we request a determination that is service is complete. If the Court decides this type of water system is not intended to be covered by the Case Management Order, we request dismissal.

5. Sandra Marshall Living Trust (dba Sierra Retreat);

a. Basis for inclusion: CMO 3h

b. Status of service: The Sandra Marshall Living Trust returned a Disclaimer of Interest form. The Sandra Marshall Trust, dba Sierra Retreat, according to its website (<http://www.sierraretreatresort.com>), is a vacation resort with cabins and a restaurant/pizza parlor. The Sandra Marshall Living Trust, dba Sierra Retreat, has a "small public water system" that is permitted and inspected by the Mono County Health Department. The Mono County Health Department file could not be located for further review. Based on the nature of the business conducted by the Trust, it appears that this business is also a "transient non-community water system." See Exhibit 5.

c. Counsel: None indicated.

d. Address for service: Sandra Marshall Living Trust  
Sandra Marshall, Trustee  
106705 US Hwy 395  
Coleville, CA 96107

e. Requested Action: If the Court determines this type of water system should be included in this action, we request a determination that is service is complete. If the Court decides this type of water system is not intended to be covered by the Case Management Order, we request dismissal.

The issue presented in this report is also raised by the following twelve persons and entities. All but two were personally served. Several of these persons and entities are properly included as defendants for other rights apart from the resolution of the instant issue.

1. Jeffery H. and Michele C. Hinds; dba Mountain View Barbeque: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
2. The Charles A. Baker, Jr. Family Trust dtd 6/20/20; dba Big Meadow Lodge: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
3. American Land & Leisure, Inc.; dba Falling Rock Marina: Further research shows that the permit is actually in the name of Lee and Cheryl McCoy, who are already defendants for separate decreed rights, See Service Report No. 3.



4. James Edgar and Brinn Ellen Little; dba Virginia Creek Settlement: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
5. The Fesko Family Trust UDT 1-6-93; dba Meadowcliff Lodge: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
6. Cal-Coast Marine, Inc.: This entity holds a 2/3 Interest in "Doc and Al's," which holds the Health Department permit: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
7. L.A. and C.R. Harlander Trust: This entity holds a 1/3 interest in "Doc and Al's," which holds the Health Department permit: Personal Service shown in Proof of Service No. 4, filed June 30, 2010.
8. Bridgeport Reservoir Recreation Area, Inc. DBA Bridgeport Reservoir Boat Landing: Personal Service shown in Proof of Service No. 4, filed June 30, 2010. In addition, this entity filed a Notice of Intent to Appear on April 6, 2009; and would be included in Report 17.
9. The Stevens Family Trust udt 11/18/03; dba Topaz Lake RV Park: Although this entity waived service, we are still looking into its status and would likely address it further in Report 17.
10. Twin Lakes Enterprises, Inc; DBA Twin Lakes Store and Twin Lakes Resort: This entity waived service and is addressed in Service Report 15 based on rights on other properties that would keep them as defendants.

#### CONCLUSION

We ask the Court to determine the status of the abovementioned defendants in relation to the uses identified herein. If the Court determines that these users are to be included in this case, we ask the Court to determine that the five persons and entities discussed in detail be deemed served. A proposed Order Concerning Sixteenth Report of the United States of America Concerning Status of Service on Certain Persons and Entities will be submitted to the Court

following a determination on these issues.

Dated: October 14, 2010

Respectfully submitted,

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By /s/ Susan L. Schneider  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of October, 2010, I electronically filed the foregoing SIXTEENTH REPORT OF THE UNITED STATES OF AMERICA CONCERNING STATUS OF SERVICE ON CERTAIN PERSONS AND ENTITIES AND REQUEST FOR GUIDANCE with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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and I further certify that I served or caused to have served a true and correct copy of the foregoing on the following non-CM/ECF participants by U.S Mail, postage prepaid, this 14<sup>th</sup> day of October, 2010:

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